

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 332 of 1993
in
SPECIAL CIVIL APPLICATION NO 6109 of 1983

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SARLABEN J SHAH

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 332 of 1993
MR SH SANJANWALA for Appellant No.
MR PR ABICHANDANI, AGP, for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 21/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. This Appeal is arising out of the Judgment and
order dated 23.7.1993 passed by the learned Single Judge
in Special Civil Application No.6109 of 1983. From the

Judgment of the learned Single Judge it is more than clear that the petition was mainly under Article 227 of the Constitution and not only that the learned Single Judge himself has exercised his power under Article 227 of the Constitution. In that view of the matter no LPA would lie before this Court.

2. However, learned Counsel Shri Sanjanwala tried to submit that once this Appeal was entertained by the Division Bench of this Court way back on 20.8.1993, then on this ground it should not be dismissed otherwise the Appellant would become remediless because availing alternative remedy now, before the appropriate forum, would be time barred. It is true that by now the matter before the appropriate forum would be hopelessly time barred, but in our considered opinion, it may not come in the way of the Appellant as the appellant was having wrong bonafide impression that the order passed by the learned Single Judge of this Court is appealable before this Court in LPA. Merely because the Appeal was entertained by the Division Bench of this Court in 1993 that itself would not be a ground for this Court to hear and decide the same on merit. The Law on this point is very well settled by the Full Bench of this Court in the case of DILAVARSINH KHODUBHA v/s. STATE OF GUJARAT, reported in 1995 (1) GLR 110.

3. In view of the above discussion, without going into the merits of the case, this Appeal is dismissed only on the ground that it is not maintainable. Interim relief granted earlier in Civil Application stands vacated forthwith.

(B.J.Shethna, J.)

Date : July 21, 2004

(M. C. Patel, J.)

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